bsb

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 1551 OF 2006

Smt. Neeta H. Desai ... Petitioner

V/s

Goyal M.G. Gases Ltd. & anr. ... Respondents

Mr. P. Janardanan with Prakash Naik for the petitioner.

Mr. N.K. Mudnany for the respondent No.1.

Mrs. U.V. Kejariwal, A.P.P. for the Resp.No.2 State.

CORAM: S.B. MHASE &
SMT. NISHITA MHATRE, JJ.

DATED: 6TH DECEMBER, 2006.

P.C.:

1. This is a petition for quashing the proceedings filed before the Magistrate, Gaziabad, U.P. being C.C. No. 1308 of 1998, wherein the Magistrate has taken a cognizance and issued a summons to the petitioner. The complaint has been filed under Section 138 of the Negotiable Instruments Act. It is an admitted fact that the petitioner is a signatory to the cheque in dispute. It is equally admitted that the loan transaction was existing between the complainant and the Company where the petitioner was serving. It is also an admitted position that, in order to repay the said loan, cheques

were signed by the petitioner. The only case made out by the petitioner is that the petitioner was a Company servant and she was authorized to sign the cheques for and on behalf of the company and the Managing Director and, therefore, she is not responsible for the offence. Since she is an employee acting under the direction of the Managing Director of the Company, she is equally responsible for the dishonour of the cheques. Because, being a signatory authorized to sign the cheques, she was under obligation to find out whether the amount under the cheque is available in the Company's account or not. It is tried to be submitted that there was a Garnishee Order by the Income Tax Department. If this was a position, then the petitioner was supposed to take more precaution before signing the cheque since it was a Garnishee amount. Since this is a petition to quash the complaint, prima facie, we are satisfied that the complainant makes out a cognizable case and the Magistrate is justified in taking cognizance and, therefore, we are not inclined to grant the prayers.

3. Petition is dismissed.

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(S.B. MHASE, J.)

(SMT. NISHITA MHATRE, J.)